

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

LLOYD R. PUTMAN,	)	
	)	
Claimant,	)	<b>IC 2006-504655</b>
v.	)	
	)	
MOTOR WEST, INC.,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSION OF LAW,</b>
Employer,	)	<b>AND RECOMMENDATION</b>
and	)	
	)	
LIBERTY NORTHWEST	)	<b>FILED JUNE 8 2007</b>
INSURANCE CORPORATION,	)	
	)	
Surety,	)	
Defendants.	)	
	)	

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**INTRODUCTION**

The Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Boise on January 30, 2007. D. Samuel Johnson represented Claimant. Kent W. Day represented Defendants. The parties presented oral and documentary evidence and submitted briefs. The case came under advisement on April 4, 2007. It is now ready for decision.

**ISSUES**

After due notice, the parties at the time of hearing stipulated to reduce the issues to the following single issue:

Whether Claimant suffered a compensable accident arising out of and in the course of employment, without regard for whether or to what extent an injury resulted therefrom.

All other issues were reserved.

## **CONTENTIONS OF THE PARTIES**

Claimant contends he suffered a compensable accident at work. He fell and struck his head against a jack handle of his tractor-trailer. The accident was unwitnessed.

Defendants contend Claimant did not suffer an accident. They question Claimant's credibility in describing the "accident."

## **EVIDENCE CONSIDERED**

The record in the instant case consists of the following:

1. Hearing testimony of Claimant, his common-law wife Barbara Border, her son and Claimant's co-worker Robert Nading, Employer's safety director John Nesbit, and dispatchers Michael Tucker and Derek Frank;
2. Claimant's Exhibits 1 – 4; and
3. Defendants' Exhibits A – N.

After considering the record and briefs of the parties, the Referee submits the following findings of fact, conclusion of law, and recommendation for review by the Commission.

## **FINDINGS OF FACT**

1. Claimant worked as a truck driver for Employer. On February 20, 2006, Claimant arrived at Employer's yard. He then went to a Pilot Truck Stop to pick up his trailer.
2. Claimant testified that he suffered an unwitnessed accident in which he struck his head on the handle to the landing gear of the trailer. He may have lost consciousness.
3. Claimant completed his work, met co-worker Robert Nading at the Pilot, and they began their routes in separate trucks. Within about one hour after he met Mr. Nading at Pilot, Claimant experienced vision problems. He contacted Mr. Nading who contacted Employer. Claimant returned to Employer's yard. Claimant sought medical attention the same day.

Steven Eichelberger, M.D., examined Claimant. Dr. Eichelberger documented the absence of an abrasion, swelling, or other objective indicia of trauma. A CT scan taken the same day showed no evidence of trauma.

4. Claimant's wife stated she noticed an abrasion and swelling near Claimant's right temple.

5. Claimant completed a written notice of accident and injury on February 21, 2006.

6. Claimant visited ophthalmologist Leo Harf, M.D., on February 21, 2006. Dr. Harf's record does not indicate any examination of the alleged point of impact. Dr. Harf diagnosed diabetic vitreous hemorrhage, "probably secondary to his fall, but of course the underlying cause is his diabetic retinopathy."

7. A dispute arose whether Mr. Nading reported to Employer that Claimant had suffered an accident at home the day before. The record contains no evidence that Claimant suffered an accident the day before.

#### **DISCUSSION AND FURTHER FINDINGS OF FACT**

8. **Accident.** A claimant bears the burden of proving a compensable accident occurred. Painter v. Potlatch Corp., 138 Idaho 309, 63 P.3d 435 (2003). Claimant testified the accident occurred. He is vague about whether he lost consciousness. He is inconsistent about whether he had a headache following it. The medical record of Dr. Eichelberger's examination showed no mark or other objective indicator that Claimant suffered any trauma to his head. A CT scan confirmed the absence of any indicia of trauma. Claimant's wife's testimony about observing an abrasion and swelling at the alleged point of impact is contradicted by the medical record.

9. The remainder of the record which might be relevant to the question is all nonmedical hearsay.

10. Defendants' weather data is not impressive. Nor is its next-day scrutiny of the lot where the accident occurred. Whatever dew, frost, or ice that might have been present at the time of Claimant's alleged accident was not proven absent by such evidence.

11. Whether Claimant's eye condition may have been caused by trauma, by his diabetes, by some other cause, or idiopathically is not an issue for consideration.

12. This case turns upon Claimant's failure to prove that Claimant likely suffered an accident at the Pilot. Defendants' evidence suggesting no accident occurred was neither helpful nor necessary to demonstrate that Claimant did not suffer an accident as he claimed.

### **CONCLUSION OF LAW**

Claimant failed to show it likely he suffered a compensable accident arising out of and in the course of his work for Employer.

### **RECOMMENDATION**

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusion of Law as its own and issue an appropriate final order.

DATED this 5TH day of June, 2007.

INDUSTRIAL COMMISSION

ATTEST:

/S/\_\_\_\_\_  
Douglas A. Donohue, Referee

/S/\_\_\_\_\_  
Assistant Commission Secretary

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 8TH day of JUNE , 2007, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

D. Samuel Johnson  
405 South 8<sup>th</sup> Street, Ste. 250  
Boise, ID 83702

Kent W. Day  
P.O. Box 6358  
Boise, ID 83707

db

/S/ \_\_\_\_\_

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Claimant,	)	<b>IC 2006-504655</b>
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MOTOR WEST, INC.,	)	<b>ORDER</b>
	)	
Employer,	)	
and	)	
	)	<b>FILED JUNE 8 2007</b>
LIBERTY NORTHWEST	)	
INSURANCE CORPORATION,	)	
	)	
Surety,	)	
Defendants.	)	
	)	

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Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusion of law to the members of the Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant failed to show it likely he suffered a compensable accident arising out of and in the course of his work for Employer.

**ORDER - 1**

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 8TH day of JUNE , 2007.

INDUSTRIAL COMMISSION

\_\_\_\_\_  
James F. Kile, Chairman

/S/\_\_\_\_\_  
R. D. Maynard, Commissioner

/S/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

/S/\_\_\_\_\_  
Assistant Commission Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that on 8TH day of JUNE , 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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